



4000-01-U

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education

ACTION: Notice decision.

SUMMARY: The Department of Education (Department) gives notice that on August 29, 2011, an arbitration panel rendered a decision in the matter of Judy A. Davis-Perry v. Missouri Department of Social Services Rehabilitation Services for the Blind, Case no. R-S/10-1. The Department convened this panel after receiving a complaint filed by the Complainant, Judy A. Davis-Perry.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Mary Yang, U.S. Department of Education, 400 Maryland Avenue, SW., room 5162, Potomac Center Plaza, Washington, DC 20202-2800. Telephone: (202) 245-6327. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll-free, at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under FOR FURTHER INFORMATION CONTACT.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Randolph-Sheppard Act (Act), 20 U.S.C. 107d-2(c), the Secretary publishes in the Federal Register a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

Judy A. Davis-Perry (Complainant) alleged violations by the Missouri Department of Social Services, Rehabilitation Services for the Blind, the State licensing agency (SLA) under the Act, and implementing regulations in 34 CFR part 395. Complainant alleged that the SLA improperly denied her bid to manage Vending Facility #195, a vending machine facility, at the Internal Revenue Service (IRS) Consolidation offices in Kansas City, Missouri.

Specifically, Complainant alleged that the SLA's selection procedures was biased and flawed and that the SLA discriminated against her in selecting another bidder.

On October 30, 2009, the SLA mailed out a bid announcement to all licensed blind vendors notifying them of a Level II vending opening at Vending Facility #195.

On November 5, 2009, Complainant submitted her bid to manage Vending Facility #195.

On November 21, 2009, the SLA's Executive Committee (Committee,) which had the responsibility to administer the SLA's transfer and promotions procedures, interviewed five applicants for Vending Facility #195, including Complainant.

On November 24, 2009, the Committee discussed the applicants and voted unanimously to recommend another vendor to Vending Facility #195.

The successful applicant was also a member of the Committee. However, the successful applicant did not participate in the interviews of the other applicants, the Committee's discussions, or its decision.

The successful applicant was the first or second choice of all five Committee members. Complainant was ranked no higher than third on any Committee member's ballot.

On November 30, 2009, the Deputy Director of the SLA advised Complainant that another applicant had been awarded the bid to manage Vending Facility #195. Subsequently, Complainant requested an administrative review from the SLA concerning the appointment of another vendor to manage Vending Facility #195.

On December 21, 2009, SLA staff advised Complainant that her administrative review had been scheduled for January 10, 2010.

On January 25, 2010, the SLA's Deputy Director issued a written decision to Complainant rejecting her complaint about the selection process and the appointment of the other vendor to Vending Facility #195.

On February 2, 2010, Complainant filed for a State fair hearing of her complaint regarding Vending Facility #195. The SLA held a State fair hearing on July 28, 2010.

On August 12, 2010, the hearing officer issued a written recommendation to the SLA rejecting Complainant's complaint about the appointment and selection process for Vending Facility #195. The hearing officer's recommendation was later adopted by the SLA as its final administrative decision.

Subsequently, Complainant filed with the Department a request for Federal arbitration seeking an appeal of the State fair hearing decision. A Federal arbitration panel was convened on May 5, 2011, pursuant to 20 U.S.C. 207d-1(a). The issues as stated by the Federal arbitration panel were: 1) whether the SLA's final decision to select another vendor to manage Vending Facility #195, instead of Complainant, was supported by competent and substantial

evidence based upon the whole record or, rather, constituted an abuse of discretion, was arbitrary and capricious or was made without statutory authority; and 2) whether the SLA's final decision to select another blind operator to manage Vending Facility #195, instead of Complainant, unlawfully discriminated against Complainant on the basis of her physical disability or impairment.

Arbitration Panel Decision

After reviewing all of the testimony and evidence, the majority of the panel denied Complainant's complaint in its entirety. Specifically, the panel majority found that the SLA's selection of another blind vendor was supported by substantial evidence based on the entire record. The panel majority rejected Complainant's argument that the Committee's recommendations to the SLA were inconsistent with the Randolph-Sheppard Act and the implementing regulations. Similarly, the panel majority rejected Complainant's argument that the SLA's Deputy Director merely rubber stamped the Committee's recommendations to select another vendor for Vending Facility #195. The panel concluded that the evidence did not support Complainant's allegation that the process used in selecting another vendor was biased or flawed.

Concerning issue number 2 Complainant alleged that the SLA discriminated against her by providing the Committee information about a customer complaint concerning Complainant's service dog wandering around her convenience store. The panel majority concluded that Complainant failed to produce any evidence that suggested that the SLA considered Complainant's use of a service dog in making its recommendation and award of Vending Facility #195.

One panel member concurred with the panel majority's decision to deny the Complainant's grievance in whole, but dissented from the decision on the process of awarding vending facilities by the SLA, stating that there are some potential problems with the SLA's current bid- selection process, possibly due to the small number of blind vendors in the program.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the Department.

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Dated: January 04, 2012

Alexa Posny,
Assistant Secretary
for Special Education and
Rehabilitative Services.

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